were charged to the Overseas Chinese Bank, and Mr. Yong Sze Lin was instructed by the defendant to arrange for the discharge of the charge and pay the amount due from the purchase money. There was a caveat lodged on the lands by the Registrar of Titles, and this Mr. Yong Sze Lin arranged to be removed. The defendant introduced the plaintiff to the tenants on the land and told them to pay the rents to him. Before he could pay off the charge on the properties to the Overseas Chinese Bank a caveat, the reason of which is not known, was lodged by the Proper Registering Authority. Thereafter there was no point in paying off the bank, and the matter remained in abeyance until Mr. Yong Sze Lin sent the purchase price to the defendant's solicitors on the 19th April, 1945. The defendant's solicitors refused to accept it.

Held, that the learned trial judge found as a fact that the agreement for sale has been varied and that the respondent had agreed to accept the land encumbered as it was. The fact that the respondent could not have succeeded in an action for specific performance in 1943 is not relevant.

The appeal was dismissed with costs, but by agreement the order of the learned trial Judge was varied by including an order that the appellant will be indemnified in respect of any claim by the Overseas Chinese Bank in respect of the charge under the Debtor & Creditor (Occupation Period) Ordinance, 1948.

COURT OF APPEAL.

P. J. D. Regester for the appellant.

R. V. H. Rintoul for the respondent.

Cur. Adv. Vult.

The Judgment of the Court was delivered by Mathew, C.J., with which Sir Charles Murray-Aynsley, C.J., (Singapore) and Wilson, J., concurred.

Mathew, C.J. (F.M.) : — In this case the defendant-appellant agreed to sell to the plaintiff three parcels of land. A document of transfer was executed by the defendant and given to the plaintiff. The purchase price was handed over to Mr. Yong Sze Lin who held it as stake-holder. The lands were charged to the Overseas Chinse Bank, and Mr. Yong Sze Lin was instructed by the defendant to arrange for the discharge of the charge and pay the amount due from the purchase money. There was a caveat lodged on the lands by the Registrar of Titles, and this Mr. Yong Sze Lin arranged to be removed. The defendant introduced the plaintiff to the tenants on the land and told them to pay the rents to him. Before he could pay off the charge on the properties to the Overseas Chinese Bank a caveat, the reason which is not known, was lodged by the Proper Registering Authority. Thereafter there was no point in paying off the bank, and the matter remained in abeyance until Mr. Yong Sze Lin sent the purchase price to the defendant's solicitors on the 19th April, 1945. The defendant's solicitors refused to accept it.

The appellant's contention is that he, being unable to transfer the land to the respondent free of all encumbrances, is entitled to have the land back plus all the rents collected by the respondent on payment to the respondent of the forfeit of $4,000 provided for under the agreement of sale.

It has been suggested by the appellant that Mr. Yong Sze Lin, had he been more diligent, could have had the transfer registered before the second caveat by the Proper Registering Authority was lodged. There are no merits in this suggestion, and it is clear from the correspondence that the delay in registering the transfer was occasioned by the necessity to re-register in the Seremban High Court a power of attorney. The trial judge found as a fact that the agreement of sale had been varied and that the respondent had agreed to accept the land encumbered as it was. The fact that the respondent could not have succeeded in an action for specific performance in 1943 is not relevant. The appellant has been unfortunate; he has derived no financial benefit from the deal and is probably under a liability to pay off the charge to the Overseas Chinese Bank.

I would dismiss the appeal with costs, but by agreement the order of the learned trial judge should be varied by including an order that the appellant will be indemnified in respect of any claim by the Overseas Chinese Bank in respect of the charge under the Debtor and Creditor (Occupation Period) Ordinance, 1948. The deposit in Court will be paid to the respondent against his costs.

Appeal dismissed.

S. S. T. MUTHUCHELLAPPA CHETTIAR
v.
THE INDIAN OVERSEAS BANK LTD.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 3 of 1952]

Agency — Termination of Agency by war — Plea of novation — Scope of agency — Rectification by constituted attorney.

This was an appeal against the Judgment of Abbott J. reported sub nom. **The Indian Overseas Bank Ltd. v. S.S.T. Muthuchellappa Chettiar (1952) M.L.J. 25.** The only point in this case, which was a claim for money lent by the Overseas Indian Bank Ltd., was whether one R.M.K. Kumarappa Chettiar had the authority of his principal, the defendant-appellant, to borrow the money. The trial Judge held that although Kumarappa Chettiar's power of attorney had ceased in 1946 nevertheless as he acted under the defendant's instructions to carry on, he was acting within the scope of his agency in making loans and if there was a novation it was on behalf of the principal. He further held that payment by appellant's new attorney, Palaniappa Chettiar, with a promise to repay constituted a ratification of Kumarappa Chettiar's act and against this decision the defendant appealed. The appellant's main ground for appeal was that Kumarappa Chettiar had no authority, expressed or implied, to borrow the money and bind the defendant-appellant. The

facts of the case appear sufficiently from the judgments of Mathew, C.J. and the learned trial Judge.

Held, dismissing the appeal, that Kumarappa Chettiar had the same authority as he had under his original Power of attorney and had full authority to conclude on behalf of the appellant the transactions of the 1st August 1946. Even if this were not so, the transaction was ratified by his attorney Palaniappa Chettiar.

COURT OF APPEAL.

M. Edgar for the appellant.

W. H. Sault for the respondents.

Cur. Adv. Vult.

The judgment of the Court was delivered by Mathew, C.J., (F.M.), with which Sir Charles Murray-Aynsley, C.J., (Singapore), and Wilson, J., concurred.

Mathew, C.J. (F.M.) : — The only point in this case, which is a claim for money lent by the Indian Overseas Bank Ltd., is whether one R. M. K. Kumarappa Chettiar had the authority of his principal, the defendant-appellant, to borrow the money. The trial judge gave judgment for the plaintiffs, and against this judgment the defendant has appealed. The appellant's main ground of appeal is that Kumarappa Chettiar had no authority, expressed or implied, to borrow the money and bind the defendant-appellant.

The facts of the case are that in 1941 R. M. K. Kumarappa Chettiar was the defendant's agent in Malacca operating under a power of attorney. He continued to look after the defendant's interest and wrote to the defendant, specifically informing him that he was carrying on his estates by means of temporary loans from banks. To this letter the defendant replied :—

"S. S. T. Muthuchellappa replied that since no proper person was available to be sent over, he himself would go over there and till then Kumarappa should carry on as agent."

It was not until the 2nd August, 1946, that Kumarappa Chettiar received the following telegram :—

"Palaniappa and myself arranging passage for going over there soon shall start when passage available wait there till then don't start for any reason whatever have to look into your accounts and settle for mistakes don't alienate or borrow monies Muthusellappan."

After the Japanese occupation, the banking account with the plaintiffs, which Kumarappa Chettiar was operating as the agent of the defendant, was frozen, and on 14th November, 1945, Kumarappa Chettiar opened a new account in the defendant's name. Kumarappa Chettiar operated on this account until the 1st August, 1946, when the account showed a debit balance of something over $15,000. On that day the Bank having asked for security, a loan account was opened for $7,500 on a promissory note, and certain securities were deposited. $7,500 was then drawn from the loan account and paid into the current cash account in reduction of the over-draft of $15,000. Two promissory notes for $7,500 each were given to the Bank, Kumarappa Chettiar binding himself personally and his principal. In September 1947 Kumarappa Chettiar went to India and Palaniappa Chettiar, who had been appointed attorney, took over the affairs of the defendant. He went immediately to the Bank and examined the accounts. In December 1947 he paid $500 into the current account and promised to repay the two accounts. In February 1948 he informed the Bank that he would reduce the two accounts by $500 a month, and in March 1948 that the defendant was going to settle the two accounts.

What in fact the defendant intended we do not know as, for reasons best known to himself, he did not give evidence in support of his pleading that Kumarappa Chettiar had no authority to bind him in the transactions the subject of this case.

Within a few days of the end of the occupation, Kumarappa Chettiar wrote to the defendant informing him that he had been looking after his accounts since May 1943, and later wrote a letter giving details of how he was financing the various estates of the defendant. The answer that he received to this letter was, in my view, an authority for him to carry on as he had done since 1943 until the defendant arrived to take over himself. It was not until 2nd August 1946 that the defendant informed Kumarappa Chettiar by telegram that he was shortly arriving with Palaniappa. It was in this telegram that he specifically gave the instruction not to alienate or borrow monies. Possibly, as he was himself shortly arriving in Malacca he wished any new business to be undertaken by himself.

By the 2nd of August, 1946, the transaction, the subject matter of this suit, had been completed. In my view the trial judge rightly held that Kumarappa Chettiar had authority to borrow money. I am satisfied from the correspondence that on the 1st August, 1946, Kumarappa Chettiar had the same authority as he had under his original power of attorney, and had full authority to conclude on behalf of the defendant the transactions of the 1st August, 1946.

Even if this were not so, the transactions were ratified by his attorney Palaniappa Chettiar. The defendant was aware of the transactions which had taken place when he received (in India) the letter of 13th September, 1947, from the Bank informing him of the state of the loan and current accounts. In spite of this information no action was taken by the defendant and in March, 1948, his attorney, who had been pressed by the Bank for some months, was still promising to repay the amounts.

In my view the trial judge rightly held that there was no substance in the defence of novation. I would dismiss the appeal with costs and order that the deposit in Court be paid out to the respondents against their costs.

Appeal dismissed.

V. RM. M. MEYAPPA CHETTIAR
v.
YIN KOK WEE.

[App. Civ. Juris. (Whitton, J.) August 11, 1952]

[Kuantan — Civil Appeal No. 1 of 1952]

Practice and Procedure — Sessions Court — Adjournment — Illness of witness — Evidence of medical certificate — Evidence of party essential — Refusal of Sessions Court Judge to grant adjournment — Discretion.

The respondent brought an action against the appellant in the Sessions Court of Kuantan for the sum of $1,000 and costs on the claim based on an I.O.U. The suit was filed on October 31, 1951 and fixed for hearing on November 28, 1951. Five adjournments were applied for and granted to the appellant on various grounds. On January 23, 1952 the President of the Sessions Court fixed the case for hearing on February 27, 1952 after warning the appellant's attorney that this was the final postponement. On February 27, 1952 counsel for the appellant asked for further postponement and produced a medical certificate. The President refused further postponement and proceeded with the hearing of the case. The appellant appealed.

Held, that the appellant had ample opportunities to present his case before he became ill and failed to do it and the President was justified in refusing to act upon the medical certificate and has exercised his discretion rightly in refusing to grant further adjournment.

Cases referred to:—

(1) *Maxwell v. Keun & Ors.* (1928) 1 K.B. 645.

(2) *Dick v. Piller* (1943) W.N. 123; (1943) 1 All E.R. 627.

APPEAL from the Sessions Court at Kuantan.

J. S. H. Skrine for the appellant.

Respondent in person.

Cur. Adv. Vult.

Whitton, J.: — This is an appeal against a judgment of the President, Sessions Court, Kuantan, in favour of the respondent for the sum of $1,000 and costs on a claim based on an I.O.U.

It is necessary to recapitulate briefly the history of the proceedings in the Lower Court. The suit was filed on 31st October 1951 and fixed for hearing on 28th November 1951. On the 28th November a firm of solicitors sent a telegram to the Court stating they would be unable to represent the defendant (now appellant) on the following day. On 28th November the defendant was represented by his Attorney, though, as far as the President's recollection goes, the latter did not disclose the fact that he was an Attorney and not the defendant appearing in person. On that day, presumably on the strength of the telegram I have mentioned, the case was postponed to 19th December for hearing. On 29th November a letter was received from the defendant's solicitors asking for a postponement and stating "any date after 11th February 1952 will be suitable to us". On 10th December a further letter was received by the Court from the defendant's solicitors stating *inter alia* that "Our client has suddenly been called to India on an urgent matter and we shall be glad if the suit can be put off to some date in February 1952 when he is expected to return". On 19th December the President agreed, though as he says with some reluctance, to postpone the case until 23rd January 1952. Before that date a further request for postponement was received from the defendant's solicitors on the ground of other Court engagements. On 23rd January the President fixed the case for hearing on 27th February after warning the defendant's Attorney that this was the final postponement. On 27th February counsel from a different firm of solicitors appeared on behalf of the defendant, and asked for a postponement until 10th May. A medical certificate issued in India dated 15th February, 1952 was produced stating the defendant was "suffering from chronic dyspepsia and he is advised to undergo treatment, including dieting for three months". The President refused further postponement, and counsel for the defendant then withdrew from the proceedings. The plaintiff then gave evidence on his own behalf. The defendant's Attorney though present in Court offered no defence. The President then made the decision which is now appealed against. There is no suggestion the plaintiff was not prepared to proceed on any of the dates of hearing which were successively fixed. It is agreed that on 28th November when the case was first fixed for hearing the defendant was still in Malaya, though he was already making preparations to go to India.

The appeal is on the following ground:—

"As the defendant was in India and he produced a medical certificate and in view of the fact that Counsel for the defendant offered to pay into Court the amount claimed by the plaintiff, the learned trial Judge was wrong in not granting the postponement asked for."

In the leading English case on this subject, *Maxwell v. Keun & Ors.*[1], it was laid down that the Court of Appeal ought to be very slow to interfere with the discretion vested in a Judge by Order XXXVI r. 34 with regard to such a matter as the adjournment of the trial of an action before him, but that if the Court of Appeal was satisfied the result of the refusing of